Renzenberger, Inc. *and* United Transportation Union Local Union No. 1670. Case 15–CA–15735

April 5, 2001

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS LIEBMAN AND WALSH

On a charge filed by the Union on February 18, 2000, and an amended charge filed on May 30, 2000, the General Counsel of the National Labor Relations Board issued a complaint on May 31, 2000, against Renzenberger, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (3) of the National Labor Relations Act. Subsequently, on June 7, 2000, the Respondent filed an answer to the complaint. On January 4, 2001, however, the Respondent withdrew its answer.

On March 5, 2001, the Acting General Counsel filed a Motion for Default Summary Judgment with the Board. On March 6, 2001, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Default Summary Judgment disclose that the Respondent, by letter dated January 4, 2001, withdrew its answer to the complaint. Such a withdrawal has the same effect as a failure to file an answer, i.e., the allegations in the complaint must be considered to be admitted to be true.[1]

Accordingly, based on the withdrawal of the Respondent's answer to the complaint, we grant the Acting General Counsel's Default Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Kansas corporation, with a jobsite in Livonia, Louisiana, has been engaged in the furnishing of van and shuttle crew transportation services. During the 12-month period ending May 31, 2000, a representative period, the Respondent, in conducting its normal business operations, performed services valued in excess of $50,000, in States other than the State of Louisiana. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

M.C. Covan	SiteArea Manager
John Wilson	Regional Manager
Jerry Simpson	Area/Regional Manager

The Respondent, by the individuals named below, about the dates and at the locations opposite their names, threatened its employees with plant closure and loss of jobs because of their activities on behalf of the Union:

(a) John Wilson	mid-October 1999	Billy's Diner
(b) M.C. Covanlate	Late October 1999	Livonia jobsite
(c) M.C. Covan	mid-November 1999	Livonia jobsite
(d) M.C. Covan	November 23, 1999	Livonia jobsite

The Respondent, in about November 1999, by Covan, at the Livonia jobsite, threatened its employees with unspecified reprisals because of their activities on behalf of the Union.

On about November 20, 1999, the Respondent, by Covan in his home, created the impression among its employees that their union activities were under surveillance by the Respondent.

On about November 24, 1999, the Respondent issued a written warning to its employee Adrienne Stermer and on about December 21, 1999, terminated employee Adrienne Stermer. The Respondent engaged in the above activity because Stermer joined and assisted the Union and to discourage other employees from engaging in these activities.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed them

[1] *Maislin Transport*, 274 NLRB 529 (1985).

in Section 7 of the Act in violation of Section 8(a)(1) of the Act. Further, by the acts and conduct described above, the Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(3) and (1). The unfair labor practices described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(3) and (1) by issuing a written warning to Adrienne Stermer and again violated Section 8(a)(3) and (1) by discharging Stermer, we shall order the Respondent to make her whole for any loss of earnings and other benefits she may have suffered by reason of the discrimination against her.[2] Backpay shall be computed in accordance with *F.W. Woolworth Co*., 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent shall also be required to remove from its files all references to the unlawful warning and termination of Stermer, and to notify her in writing that this has been done, and that the unlawful conduct will not be used against her in any way.

ORDER

The National Labor Relations Board orders that the Respondent, Renzenberger, Inc., Shawnee, Kansas, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening its employees with plant closure and loss of jobs because of their activities on behalf of the Union.

(b) Threatening its employees with unspecified reprisals because of their union activities.

(c) Creating the impression among its employees that their union activities are under surveillance.

(d) Issuing written warnings to its employees in retaliation for their union activities.

(e) Discharging its employees in retaliation for their union activities.

(f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make Adrienne Stermer whole for any loss of earnings and other benefits suffered as a result of the discrimination against her, with interest, in the manner set forth in the remedy section of this decision.

(b) Within 14 days from the date of this Order, remove from its files any reference to the written warning issued to Adrienne Stermer and to her unlawful discharge, and within 3 days thereafter, notify her in writing that this has been done, and that the unlawful conduct will not be used against her in any way.

(c) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, including an electronic copy of such records, if stored in electronic form, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Within 14 days after service by the Region, post at its jobsite in Livonia, Louisiana, copies of the attached notice marked "Appendix."[3] Copies of the notice, on forms provided by the Regional Director for Region 15, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or ceased working at the jobsite involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 1999.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. April 5, 2001

John C. Truesdale, Chairman

Wilma B. Liebman, Member

Dennis P. Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[2] The Acting General Counsel's motion states that the Respondent reinstated Stermer on January 15, 2001. Accordingly, the Acting General Counsel does not seek a reinstatement order, and we have not included one in our Order.

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Governemnt

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT threaten you with plant closure and loss of jobs because of your union activities.

WE WILL NOT threaten you with unspecified reprisals because of your union activities.

WE WILL NOT create the impression among you that your union activities are under surveillance.

WE WILL NOT issue written warnings to you in retaliation for your union activities.

WE WILL NOT discharge you in retaliation for your union activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make Adrienne Stermer whole for any loss of earnings and other benefits she suffered as a result of the discrimination against her, with interest. Adrienne Stermer was reinstated to her job on January 15, 2001.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any references to the written warning issued to Adrienne Stermer and to her unlawful discharge and WE WILL, within 3 days thereafter, notify her in writing that this has been done, and that the unlawful conduct will not be used against her in any way.

RENZENBERGER, INC.